82333-2

COA No. 261808

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

JAMES ROBERT NASON,
Defendant/Appellant.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT
HONORABLE MICHAEL P. PRICE

BRIEF OF APPELLANT

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A. INTRODUCTION

This appeal challenges on due process grounds a scheme presently used by the Spokane County Superior Court regarding future violations of modified orders concerning legal financial obligations [LFO], specifically, the failure to make required payments towards the LFO. The scheme governs future conduct and is made a condition of an order modifying a sentence entered after a stipulation or hearing.

The challenged provision sets a future starting date for a specified monthly payment. The case is to be reviewed by a court clerk on a specified date six months later for compliance in making the payments. If the superior court clerk determines an offender (1) has not complied with the payment schedule and/or (2) has not filed a motion with the court for a stay by that review date, the order requires the offender to report to jail on a specified date, to serve a specified number of days in jail. The failure to report to jail is a violation of the order modifying sentence, and supports the issuance of a bench warrant. This scheme, sometimes referred to as "auto-jail,"[1] violates an offender's procedural due process rights.

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[1] The term "auto-jail" is specifically used in the proceedings below by defense counsel (4/6/07 RP 6-7, 11; CP 71, 97-100, 104), by the SCOMIS data entry person in reference to a violation report filed by the superior court clerk (Appendix A, CP 53), and by Judge Michael Price in his ruling that is the subject of this appeal ("And that really leads me to the term that we are – I guess, myself included – *constantly referring to as the "auto-jail provision."*) (4/27/07 RP 6-7) (emphasis added).

This appeal also challenges the scope of participation by the county clerk in the collection of LFOs as exceeding the enabling authority granted by the Legislature.

This appeal further challenges the trial court's ruling that there is no statutory basis to give an offender credit towards his LFO for jail time served on that portion of the sanction attributable to his failure to pay on the LFO.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in finding the defendant had been ordered to pay restitution as part of his sentence. (Finding of Fact No. 1 (portion) at CP 114)

2. The trial court erred in finding that Department of Corrections terminated the defendant's supervision on November 18, 2003. (Finding of Fact No. 3 at CP 115)

3. The trial court erred in finding Mr. Nason "has received due process during these violation proceedings." (Finding of Fact No. 11 at CP 116)

4. The trial court erred in finding Mr. Nason "had the right to request a stay or a hearing at any time prior to the report to jail date." (Finding of Fact No. 12 at CP 116)

5. The trial court erred in concluding Mr. Nason "has received due process in these legal financial violation proceedings." (Conclusion of Law No. 7 at CP 117)

6. The trial court erred in concluding "There is no statutory authority allowing a felony offender to receive credit against his legal financial obligations for the time served in jail for failure to pay legal financial obligations." (Conclusion of Law No. 8 at CP 117)

7. The trial court erred in imposing a suspended sentence.

8. The trial erred in finding the auto-jail provision does not violate constitutional rights. (4/27 07 RP 7)

9. The trial court erred in denying Mr. Nason's request to strike the auto-jail report date provision from the Order Enforcing Sentence - LFO. (4/27 07 RP 7; CP 109)

10. The superior court clerk's participation in the collection of Mr. Nason's LFO exceeded its limited statutory authority.

Issues Pertaining to Assignments of Error

1. Did the trial court exceed its authority by imposing a suspended sentence? (Assignment of Error No. 7)

2. Does due process require the trial court to determine whether a non-complying offender had the ability to pay before finding his failure to

pay towards his LFO was willful? (Assignment of Error Nos. 3, 5, 8, 9 and 10)

3. Is due process violated where the determination of willfulness is made in advance of an offender's non-compliance by failure to make scheduled payments toward an LFO? (Assignment of Error Nos. 3, 5, 8, 9 and 10)

4. Does the auto-jail scheme violate due process where it requires incarceration before the trial court makes a determination as to an offender's ability to pay and the willfulness of his failure to pay? (Assignment of Error Nos. 3, 5, 8, 9 and 10)

5. Does the auto-jail scheme violate due process where it relieves the State of its burden to show noncompliance by a preponderance of the evidence? (Assignment of Error Nos. 3, 5, 8, 9 and 10)

6. Is due process violated where an offender is incarcerated without being advised of the right to a hearing and opportunity for advice of counsel? (Assignment of Error Nos. 3, 4, 5, 8, 9 and 10)

7. Does a Superior Court clerk exceed its limited statutory authority to participate in the collection of an LFO, by negotiating a stipulated order including sanctions, advising an offender of his constitutional and due process rights, and applying discretion and

judgment to implement a jail report date? (Assignment of Error Nos. 3, 4, 5, 8, 9 and 10)

8. Did the trial court err in failing to apply statutory requirements that a term of incarceration for non-payment is limited by the remaining amount owed on an LFO, and that an offender must be given credit toward his LFO for time served in jail that was attributable to his failure to pay and must be given the opportunity to reduce the amount owed by performing labor? (Assignment of Error No. 6)

C. STATEMENT OF THE CASE

18-year old James Nason pled guilty to second-degree burglary in 1999. (CP 3-9, 10) He was ordered to pay total costs of $735.00, consisting of a $500 victim assessment, $110 in court costs, and a $125 court-appointed attorney fee. (CP 13) No restitution was ordered.[2] The Judgment and Sentence includes a boilerplate finding that Mr. Nason "has the ability or likely future ability to pay the legal financial obligations imposed herein." (CP 12) Based on an offender score of zero yielding a standard range of one to three months, Mr. Nason was sentenced to 30

[2] Assignment of Error No. 1. The Judgment and Sentence shows that the State was to set a restitution hearing within 60 days, if applicable. (CP 13) The superior court file does not show that such a hearing was set, and there is no Order of Restitution in the file.

days of confinement, with 14 days converted to community service and 16 days credit given for time served. (CP 12, 15-16)

Mr. Nason subsequently made some payments on his LFO. (4/6/07 RP 3; CP 116) Mr. Nason was sanctioned in February 2000 and January 2001, in part for failure to make payments. (CP 21, 31)

In 2002,[3] Department of Corrections terminated its supervision of Mr. Nason because he had fulfilled all non-financial requirements of the supervision imposed by the judgment and sentence. (CP 32) At that time, supervision for the collection of his LFO was turned over to the Spokane County Clerk, as authorized by RCW 9.94A.637. (CP 32)

In July 2005, the clerk filed a violation report, alleging Mr. Nason's failure to pay and to perform other court-ordered requirements. (CP 38-39) After he failed to appear at hearing,[4] Mr. Nason was arrested November 4, 2005 on a bench warrant[5]. (CP 47) Mr. Nason was taken to the Spokane County Jail where a clerk "advised him of his right to a hearing. Mr. Nason waived his right to a hearing and signed a LFO Agreed Order – In Custody." (CP 47) As a result, Mr. Nason was

[3] Assignment of Error No. 2.
[4] The certified mailing of the hearing notice was returned as unclaimed. (CP 118-21)
[5] (CP 44-45)

sanctioned in November 2005, in part for failure to make payments toward his LFO. (CP 38-39, 122-23)

In February 2006, the clerk filed a report, alleging Mr. Nason's violation of the November 2005 order including the failure to pay towards his LFO. (CP 46-47) The clerk further alleged Mr. Nason didn't report as ordered to the clerk's office within 48 hours of his release from the jail sanction and he didn't respond to her telephone messages. (CP 47) After he failed to appear at hearing,[6] Mr. Nason was arrested June 30, 2006, on a bench warrant[7].

A contested hearing was held July 7, 2006, before Judge Maryann Moreno. (7/7/06 RP 3-12) A clerk spoke at the hearing.

> I went over to the jail with Deputy Kyle to see Nr. Nason to ask him why he has not been paying on his LFOs. He stated that he has no income, that he is homeless, and he's living out of his car with his brother. I asked him if he's made any type of attempts to seek employment. And [Mr. Nason] stated that he's been walking up and down Sprague looking for employment [at] differen[t] places, such as McDonalds. He said he also had applied at Manpower; however, he had failed to pre-employment test. And he felt that the reason for this was due to his anger problems.
>
> The only source of income he states he has is – he receives $152 in food stamps. [The Spokane County Superior Court Clerk's Office] felt that [a sanction of] 60 days, because of this violation, was appropriate because we have gone through this with him before and he – he failed to report back in, he failed to provide

[6] The certified mailing of the hearing notice was returned as unclaimed. (CP 124-27)
[7] (CP 49-50)

financial information, and we wanted to set up a $25 or more monthly payment with him.

(7/7/06 RP 5-6)

The trial court found Mr. Nason in willful violation of its orders by failing to pay financial obligations and to report as directed, failing to provide financial information and failing to report a valid address. (CP 51) The Court imposed a 60-day jail sanction, able to be served by work release or work crew, subject to approval by staff at Geiger Corrections Center. (CP 51) The order further provided that "The defendant may be released immediately upon paying all court-ordered legal obligations in full, including interest and warrant fee/attorney fee." (CP 51)

In addition, the order required Mr. Nason to report to the clerk's office within 48 hours of his release after serving his jail sanction, in order to complete a financial assessment and a payment agreement. The order specified that Mr. Nason's failure to report after his release "will result in another bench warrant being issued for [his] arrest." (CP 52)

The order modifying sentence also contained the following auto-jail provision:

> The defendant shall pay **$25** or more monthly, effective **8/15/06**. The case is to be reviewed **1/10/07** for compliance. If the defendant has not complied with the payment schedule, nor filed a motion with the court for a stay by the review date, the defendant is to report to jail on **1/17/07** by 4:00 p.m. to serve **60 days** in jail.

(CP 52) (Underlined typewritten entries original; bolding added)

On January 26, 2007, the clerk filed a violation report, which was entered on SCOMIS as "Notice – LFO Auto Jail." (CP 53; see **Appendix A**)[8]

In the report, the clerk declared under penalty of perjury that on 1/17/07 [sic] she reviewed Mr. Nason's compliance with the July 7, 2006 order as to payments on his LFO. She determined he made no required payments and had not filed a motion to stay the order. "Therefore, [Mr. Nason] is required to report to jail on 1/24/007 [sic] by 4 p.m. to serve the 60 days specified in the attached Order Enforcing Sentence. The defendant is in further violation for not turning himself into the jail on 1/24/07 [sic]." (CP 53) The notice was copied to the Spokane County Jail and to the prosecuting attorney. (CP 53)

[8] Appendix A is a copy of the SCOMIS screen showing this entry as "Sub # 46".

The State confirmed that Mr. Nason had not reported to jail on 1/24/07 (CP 57) and requested a warrant. (CP 55-60) A bench warrant was issued in February 2007 (CP 55-60, 62) and Mr. Nason was arrested in late March 2007. (CP 63)

A hearing was held April 6, 2007, before Judge Ellen Clark. (4/6/07 RP 3-22) In addition to the failure to report to jail, the State claimed[9] Mr. Nason failed to report to the court clerk, failed to pay anything more toward his LFO[10] and failed to provide a valid address. (4/6/07 RP 4) Because Mr. Nason "has had four prior hearings" on his violations of LFO obligations, the State asked for the maximum sanction of 60 days per violation, for a total of 240 days. (4/6/07 RP 4) The State also asked for the automatic jail report date provision should Mr. Nason fail to comply with the payment schedule in the future. (4/6/07 RP 4-5)

Defense counsel said her client was stipulating to the violations, and to the sanction of 120 days total jail time as previously offered by the State. (4/6/07 RP 5, 11, 14-15) However, the defense challenged two issues: whether the "auto-jail" scheme for future noncompliance violates

[9] The State represented that county clerk had filed a violation report *after* the 1/26/07 report regarding failure to report to jail, which supposedly listed additional violations. (4/6/07 RP 4) SCOMIS does not support the representation, as there appears to be no further violation report is shown in the court file.

due process and whether a defendant should be given credit against his fine for jail time served on that portion of the sanction attributable to his failure to pay on the LFO. (4/6/07 RP 5-17)

Both counsel made comments suggesting that the "auto-jail" scheme for future noncompliance is a still-debated procedure adopted by a Spokane County local LFO committee of which Judge Michael Price was a current member. (4/6/07 RP 6-7, 9-13, 17-19) Judge Ellen Clark continued the hearing for several weeks, so that the parties could brief the issues and set the matter for hearing before Judge Michael Price. (4/6/07 RP 19-20; CP 65)

On April 27, 2007, Judge Price gave his oral ruling without hearing argument by counsel. (4/27/07 RP 2-9) He ruled that a felony offender is not entitled to credit toward costs and fines for the time served in jail for failure to pay those fines. (4/27/07 RP 5-6)

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[10] Yet the State admitted Mr. Nason had made a $15 payment after the last hearing date. (4/6/07 RP 3)

In determining that the "auto-jail" report date scheme was constitutional, Judge Price reasoned as follows:

> ... And it is clear that Mr. Nason has a right, as does every defendant, to have a hearing when there's a request for incarceration. I'm equally satisfied that it is a defendant's right to waive a hearing when they so choose and when they willingly and freely and voluntarily make that waiver. ... There's no denial of due process. Mr. Nason had a right to a hearing; that's his due process. And if he decides on his own – willingly, freely and voluntarily – to waive that hearing, that's his right.
>
> He's been accorded the opportunity to get before the court and have a discussion with a judicial officer. And that really leads me to the term that we are – I guess, myself included – constantly referring to as the "auto-jail provision." I'm satisfied, Counsel, Mr. Nason, really there isn't an auto jail provision. There isn't a mandatory, automatic incarceration requirement for a defendant, because there is a right for that defendant to have a hearing prior to that. Usually, there would have been a number of opportunities for that defendant to have a right to a hearing prior to that. Should it get to the point where a defendant has gone through the entire process of what I will call a non-payment and then a review, and then the next thing on the calendar is a report date, a defendant has a right to ask for a stay hearing prior to that report date. I don't know what other due process rights could be accorded to a defendant that aren't already built into this process.
>
> So the bottome line, Counsel, in terms of the suggested auto jail provision, I'm satisfied there is no violation of constitutional rights; it doesn't exist. I'm going to deny Mr. Nason's suggestion in that regard to strike the report date provision. It is appropriate, it's not unconstitutional, and I'll be directing it in this particular case.

(4/27/07 RP 6-7) Written Findings of Fact and Conclusions of Law were filed on August 21, 2007. (CP 114-17)

In its order, the trial court per stipulation imposed a 120 day jail sanction for Mr. Nason's willful failure to pay financial obligations, to report to the clerk as directed, to provide financial information, to report a valid address, and failure to check into jail on 1/17/07, as required. (CP 108) The order further provided that "The defendant may be released immediately upon paying all court-ordered legal obligations in full, including interest and warrant fee/attorney fee." (CP 108)

In addition, the order required Mr. Nason to report to the clerk's office within 48 hours of his release after serving his jail sanction, in order to complete a financial assessment and a payment agreement. The order specified that Mr. Nason's failure to report after his release "will result in another bench warrant being issued for [his] arrest." (CP 109)

The order further required Mr. Nason "to report to the clerk's office on a weekly basis with proof of job search. [He] is required to apply for three job openings per week. Failure to report will result in a bench warrant." (CP 109)

The order modifying sentence also contained the auto-jail provision:

> The defendant shall pay **$30** or more monthly, effective **8/1/07**. The case is to be reviewed **10/31/07** for compliance. If the defendant has not complied with the payment schedule, nor filed a motion with the court for a stay by the review date, the defendant is to report to jail on **11/14/07** by 4:00 p.m. to serve **60 days** in jail.

(CP 109) (Underlined entries original; bolding added)

This appeal followed. (CP 110-13) The court's refusal to strike the auto-jail provision in its current order modifying sentence was based on its conclusion that Mr. Nason had been afforded constitutional due process through implementation of the similar auto-jail provision found in the earlier order. Therefore, an Amended Notice of Appeal was filed on November 27, 2007, to include the prior order (7/7/06, CP 51-52) as well as the current order (4/30/07, CP 108-09) (CP 134-38)

On 10/31/07, which was the compliance review date set by the court's 4/30/07 order, Mr. Nason through counsel filed a motion to stay sentence pending hearing regarding inability to pay on his LFO. The motion for stay of sentence is set for hearing in six months, on April 25, 2008. (CP 128-32)

D. ARGUMENT

1. The trial court exceeded its authority by imposing a suspended sentence.

RCW 9.94A.575, effective July 1, 1984, eliminated a trial court's ability to suspend a sentence. "The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended." Id.

In State v. DeBello, 92 Wn. App. 723, 725, 964 P.2d 1192 (1998), Division II considered facts similar to those herein and held that the trial court lacked authority to suspend a portion of the additional confinement term. In that case, DeBello's original sentence for unlawful possession of a controlled substance required that he advise the State of any change of address and pay $1,910 in monetary obligations. The trial court later amended the sentence to permit DeBello to perform additional community service work in lieu of paying a portion of his remaining financial obligations. But DeBello failed to perform the additional community service hours or to make payments toward his LFO. He also failed to notify the State of his change of address.

Following a modification/revocation hearing, the trial court imposed a 60-day term of confinement for each violation, to be served consecutively. It then suspended 90 days of the jail time on the condition that DeBello make payments of not less than $100 per month beginning 30 days after release.

The DeBello court first noted that although RCW 9.94A.130 eliminated the trial court's discretion to suspend a sentence imposed for a felony conviction, the statute "does not necessarily control here because a trial court acting pursuant to [former] RCW 9.94A.200[11] does not 'sentence' a defendant; rather, it 'imposes' or 'orders' additional confinement as a 'penalty' or 'sanction.'" *See* RCW 9.94A.200(3)."[12] DeBello, 92 Wn.App. at 726-27.

And, although former RCW 9.94A.200 gives the trial court broad discretion to enforce sentence requirements,

> [I]t does not expressly authorize the suspension of confinement terms. And we generally do not imply authority where it is not necessary to carry out powers expressly granted.
>
> Further, ... the general structure and purpose of the SRA limits the trial court's sentencing discretion and requires determinate sentences. ...

[11] Now recodified as RCW 9.94A.634 by Laws of 2001, c 10, § 6.
[12] Now RCW 9.94A.634(3).

> Finally, the trial court does not have the inherent authority to suspend a sanction. Rather, the Legislature must grant the power to suspend a sentence or defer its imposition or execution. *Although we recognize the potential beneficial effect of a suspended sanction in motivating compliance, nothing in the statute shows that the Legislature intended to grant courts the discretion to use this remedy.*

DeBello, 92 Wn.App. at 728-29 (citations omitted, emphasis added).

Herein, the auto-jail provision contained in both challenged orders is functionally the same as the suspended sentence in DeBello:

> The defendant shall pay **$25** or more monthly, effective **8/15/06**. The case is to be reviewed **1/10/07** for compliance. If the defendant has not complied with the payment schedule, nor filed a motion with the court for a stay by the review date, the defendant is to report to jail on **1/17/07** by 4:00 p.m. to serve **60 days** in jail.

(CP 52; *see also* CP 109). This provision effectively imposes a sentence of incarceration but suspends its execution conditioned upon compliance with a schedule of future payment or the timely filing of a motion to stay execution. Therefore, since the auto-jail scheme is an impermissible suspended sentence, the trial court exceeded its authority in imposing the provision. The auto-jail provision must be stricken.

2. Mr. Nason was denied due process when he was incarcerated for failure to make payments on his legal financial obligation without a contemporaneous hearing to determine whether he had the ability to pay and his conduct was willful.

The procedures concerning noncompliance with a condition of sentence to make payments toward an LFO are governed by both statutory and constitutional requirements.

RCW 9.94A.760 authorizes the imposition of an LFO and establishes procedures in the event of noncompliance by the failure to make payments. "The requirement that an offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, ..." RCW 9.94A.760(10). "If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section." RCW 9.94A.634(1).

Under RCW 9.94A.634, a sentencing court "shall require the offender to show cause why the offender should not be punished for the noncompliance" and may issue a warrant of arrest for the offender's

appearance. RCW 9.94A.634(3)(b). The state has the burden of showing noncompliance by a preponderance of the evidence. RCW 9.94A.634(3)(c).

If the sentencing court finds that the violation has occurred,

> [I]t may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection.

RCW 9.94A.634(3)(c). Subsection (3)(a)(i) addresses penalties the Department of Corrections may impose, provided that the offender and DOC have reached a stipulated agreement. These sanctions include:

> [W]ork release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

RCW 9.94A.634(3)(a)(i).

These statutory provisions are nevertheless subject to minimum due process standards in determining noncompliance with an order to pay towards an LFO because a revocation hearing may result in a loss of

liberty. To satisfy due process standards in a sentence modification or revocation proceeding, the defendant must have been informed of the alleged violations and have an opportunity to be fully heard. City of Seattle v. Lea, 56 Wn. App. 859, 860-61, 786 P.2d 798 (1990). Specifically, due process in sentence modification or revocation hearings requires: (1) written notice of the alleged violations; (2) full disclosure of the evidence against the defendant; (3) an opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses; (5) a neutral hearing body, and (6) a written statement of the evidence relied on and reasons for revoking the probationary status. Id., (citing Gagnon v. Scarpelli, 411 U.S. 778, 786, 93 S.Ct. 1756, 1760-61, 36 L.Ed.2d 656 (1973) (quoting Morrissey v. Brewer, 408 U.S. 471, 489, 92 S.Ct. 2593, 2604, 33 L.Ed.2d 484 (1972)).

> Mr. Nason was denied due process where the auto jail scheme required incarceration before the court had determined his ability to pay and the willfulness of the failure to pay, and where the State was relieved of its burden to show noncompliance by a preponderance of the evidence.

It is fundamentally unfair to imprison indigent defendants solely because of their inability to pay court-ordered fines. Bearden v. Georgia, 461 U.S. 660, 667-68, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); Williams v.

Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586, (1970). WA Const. art. 1, § 17, prohibiting imprisonment for debt, similarly precludes imprisonment solely for inability to pay.

Before converting a defendant's LFO to jail time, for failure to make timely payments toward those obligations, the court must find that the defendant's failure to make payments was willful. RCW 9.94A.634(3)(c) and (3)(d); State v. Curry, 118 Wn.2d 911, 917-18, 829 P.2d. 166 (1992). The court must inquire into the reason for failure to pay, including the financial inability to make payments, in order to determine whether the violation was willful. State v. Bower, 64 Wn. App. 227, 231-32, 823 P.2d 1171, *rev. denied*, 119 Wn.2d 1011 (1992).

> The district court was therefore required to find that Smith's failure to pay her fines was willful. Bearden requires [1] consideration of ability to pay, [2] bona fide efforts to acquire the resources to pay, and, if necessary, [3] alternative measures other than imprisonment. 461 U.S. at 672, 103 S.Ct. 2064. In Washington the court may place the burden on the defendant to prove inability to pay. State v. Bower, 64 Wn. App. [at 234]. However, this does not eliminate the court's duty to inquire, which Bearden plainly demands.

Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 112, 52 P.3d 485 (2002). If the violation is non-willful, the court must consider alternatives to imprisonment. Bower, 64 Wn. App. at 230, 232; RCW 9.94A.634(3)(d).

Furthermore, the inquiry into an offender's ability to pay must take place at the time he is alleged to be in noncompliance, that is, *prior to incarceration.*

> Constitutional principles will be implicated . . . only if the government seeks to enforce collection of the assessments "'at a time when [the defendant is] unable, through no fault of his own, to comply.'" . . .
> . . . *It is at the point of enforced collection* . . ., where an indigent may be faced with the alternatives of payment or imprisonment, that he "may assert a constitutional objection on the ground of his indigency." (emphasis added)

State v. Curry, 118 Wn.2d at 917, citing with approval State v. Curry, 62 Wn. App. 676, 681-82, 814 P.2d 1252 (1991) (quoting United States v. Pagan, 785 F.2d 378, 381-82 (2d Cir., *cert. denied*, 479 U.S. 1017 (1986)). Any prior inquiry into Mr. Nason's "future ability to pay is necessarily speculative." State v. Bower, 64 Wn. App. 808, 814, 827 P.2d 308 (1992).

Herein, the auto jail scheme is self-executing and operates without any notion of due process. If an offender fails in the *future* to make any of the required *future* payments, s/he must report to jail for the specified period of incarceration. There is no provision for the court to fulfill its required duty to determine *at the time of the future alleged noncompliance* whether the offender is indigent and unable to pay or whether the conduct

is willful or, if willful, what is the appropriate sanction or amount of jail sanction. The scheme violates due process.

There is no evidence – in the transcripts from the 7/7/06 and 4/30/07 hearings – that Mr. Nason made an "advance waiver" of his statutory and constitutional rights to have the trial court inquire at the time of the future alleged noncompliance into the reasons for nonpayment. Moreover, such an advance waiver would be invalid because there is no way to know in advance whether the failure to pay is willful.

Furthermore, the auto-jail scheme's "opportunity" to file a motion to stay execution does not cure the due process violation. This provision erroneously assumes the trial court has the authority to constitutionally find willfulness and affix a sanction *in advance* of noncompliance. The trial court does not have any such authority. Even if an offender could waive the trial court's violation of due process, there is no evidence in the record from either hearing that Mr. Nason was informed of the opportunity for a stay process.

In addition, the auto jail provision unlawfully relieves the State of its burden of showing noncompliance by a preponderance of the evidence, pursuant to RCW 9.94A.634(3)(c). Therefore, for this additional reason, Mr. Nason's due process rights were violated.

Other jurisdictions agree with this conclusion that the auto-jail provision is an unlawful scheme that violates due process. A similar provision reached by agreement was determined to be illegal by the Florida Supreme Court in Stephens v. State, 630 So.2d 1090 (Fla. 1994), 1994 Fla. LEXIS 108.

In Stephens, the yacht broker petitioner pled *nolo contendere* to a charge of grand theft for failing to return a customer's $100,000 deposit. The trial court withheld adjudication, placing Stephens on five years probation conditioned on his making full restitution. Three years later, his failure to make scheduled restitution payments prompted a probation violation hearing. There, he was sentenced to one year in the county jail to be followed by 10 years probation. The probation was conditioned upon a payment schedule that included the understanding that if the schedule were not followed, Stephens would be automatically imprisoned. The trial court conducted an inquiry to ensure Stephens understood all conditions of the agreement and that he waived his right not to be imprisoned for debt. Stephens v. State, 630 So.2d at 1090.

The 4th District Court of Appeal affirmed, relying on its earlier holding that "a person charged with a crime can legally enter into a plea agreement with the state that he receive probation rather then be

imprisoned on conditions ... and that he waive his right not to be imprisoned for failure to pay a debt if he fails to make restitution as he has agreed, whether or not the state can prove his financial ability to make restitution. Such an agreement is not void as against public policy and is enforceable." Stephens v. State, 630 So.2d at 1090-1091, citing Brushingham v. State, 460 So.2d 523, 524 (Fla. 4th DCA 1984).

The Florida Supreme Court disagreed, citing Bearden as controlling its decision. "In Bearden v. Georgia, the [U.S.] Court held that a court must investigate the reasons for failing to pay a fine or restitution in probation revocation proceedings." Stephens v. State, 630 So.2d at 1091 (citation omitted). "[B]efore a person on probation can be imprisoned for failing to make restitution, there must be a determination that that person has, or has had, the ability to pay but has willfully refused to do so. We understand the instant trial court's frustration at having Stephens abuse the lenient treatment given him at his original sentencing. *The scheme* Stephens agreed to at his second sentencing, however, *was illegal* and he must be resentenced." Id. (emphasis added).

The scheme of future automatic imprisonment found to be unlawful in Stephens was reached by agreement and after inquiry by the trial court as to the petitioner's understanding of triggering events as well as waiver of the constitutional right not to be imprisoned solely for debt.

Herein, the facts are even more egregious than in Stephens. Unlike in Stephens, there was no discussion or agreement regarding inclusion of the auto-jail provision in Judge Moreno's 7/7/06 order modifying sentence. Furthermore, the scheme was imposed without any discussion or inquiry on the record as to understanding or waiver of precious future rights in the event of default.

Similarly, in his 4/20/07 order modifying sentence, Judge Price imposed the same auto-jail provision after a contested hearing. There certainly was no agreement as to its inclusion and there *still* was no discussion or inquiry on the record as to understanding or waiver of future rights in the event of default.[13]

[13] Mr. Nason had stipulated to the willfulness of the present violations, which presumably excused the trial court from its duty to inquire into any inability to make the payments prior to a determination the failure to pay was willful.

Finally, there is no evidence in either record that Mr. Nason was informed of and knowingly waived his constitutional rights not to be imprisoned for mere debt. Bearden v. Georgia, *supra*; WA Const. art. 1, § 17.

Mr. Nason's due process rights were violated by an illegal scheme whereby the trial court is relieved of its duty to determine ability to pay and willfulness prior to any sentence of incarceration. Consequently, the auto-jail provision must be stricken, and any sentence imposed under that scheme must also be stricken.

> Mr. Nason was further denied due process where the auto jail scheme required incarceration without a hearing and opportunity for advice of counsel.

A sentencing court "shall require the offender to show cause why the offender should not be punished for the noncompliance" and may issue a warrant of arrest for the offender's appearance. RCW 9.94A.364(3)(b).

Where the revocation of a defendant's probation may result in incarceration, the defendant is entitled to a hearing and to be represented by counsel, and if the defendant is financially unable to obtain counsel, the court shall appoint counsel for the defendant. CrR 7.6(b); RCW

9.94A.364(3)(b); State v. Conlin, 49 Wn. App. 593, 595, 744 P.2d 1094 (1987), *rev. denied* 110 Wn.2d 1010 (1988).

The waiver of the right to counsel at a sentence modification or revocation proceeding must be knowing and voluntary. Conlin, 49 Wn. App. at 595. The knowledge required to waive counsel may be gained from participation in an earlier trial on the same matter, or evidenced by experience with the criminal justice system. Conlin, 49 Wn. App. at 595-56 (citations omitted). Minimum due process requires some colloquy on the record advising a defendant of his or her rights, the risks of self-representation, and the possible penalty involved. Conlin, 49 Wn. App. at 596, citing Bellevue v. Acrey, 103 Wn.2d 203, 211, 691 P.2d 957 (1984).

Furthermore, a court must indulge every reasonable presumption against the waiver of fundamental rights. Glasser v. United States, 315 U.S. 60, 86 L.Ed. 680, 62 S.Ct. 457 (1942); Matter of Wentworth, 17 Wn. App. 644, 647, 564 P.2d 810 (1977).

Herein, there is no evidence in the transcripts from the 7/7/06 and 4/30/07 hearings that Mr. Nason was advised of his right to a future hearing and to appointment of counsel in the event of future failure to make scheduled payments, or that he waived those rights.

Similarly, the 7/7/06 and 4/30/07 orders modifying sentence make no reference to these rights or to their waiver by Mr. Nason. The orders contain identical clauses signed by the clerk:

> The undersigned Court Collection Deputy, *being in agreement with this disposition* and having advised the defendant of the right to a hearing, the right to have a lawyer at the hearing, the right to have a lawyer appointed at public expense if the defendant cannot afford a lawyer, and [sic] I witnessed the defendant affix his/her signature above after being advised of his/her rights. (Emphasis added)

(CP 52, 109) The italicized phrase confirms that any advice given by the clerk to Mr. Nason concerned the hearing resulting in that particular order, and not to future hearings or future right to counsel.

The 7/7/06 and 4/30/07 orders also contain identical clauses signed by Mr. Nason:

> I, James R. Nason, being fully advised that I have the right to be brought before the Court for a hearing, and to have an attorney present to represent me, and that the Court will appoint an attorney to represent me if I cannot afford one, by my signature below hereby waive my right to a hearing and my right to an attorney and *having read the above modification(s) and having agreed to the punishment imposed,* agree to the entry of this order.

(CP 52, 109) Here, too, the italicized phrases emphasize that the advice of rights and waiver was made only as to the hearing resulting in that particular order. The clause cannot reasonably be construed to be a

knowing and valid waiver of rights to future hearings or future appointment of counsel. Conlin, 49 Wn. App. at 595.

In Mr. Nason's case, two orders modifying sentence that *predate* the use of the auto-jail provision also contain these identical clauses. *See* CP 31,[14] 122-23.[15] The fact that the same language was used before and after inclusion of the auto-jail provision supports the conclusion that the referenced clauses in the present two orders concern only the present hearing and have nothing to do with future hearings and future appointment of counsel.

Due process was violated where Mr. Nason was not advised of his rights to a hearing and opportunity for advice of counsel prior to incarceration for failure to make scheduled payments. There is no evidence of waiver or even the trial court's inquiry into waiver. Because this Court must indulge every reasonable presumption against the waiver of fundamental rights, the auto-jail scheme must be stricken, and any sentence imposed under that scheme must also be stricken. Glasser v. United States, *supra.*

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[14] Order filed 1/11/01, signed by the Community Corrections Officer, instead of the Court Collection Deputy.
[15] Order filed 11/9/05.

3. There is no statutory authority, in connection with noncompliance with an LFO, for a Superior Court clerk to negotiate a stipulated order including sanctions, advise a defendant of his constitutional and due process rights or accept a waiver thereof, or apply discretion and judgment to implement a jail report date.

In 2003, RCW 9.94A.760 was amended to specifically include superior court clerks in the process of collecting legal financial obligations. *See* Laws of 2003, c 379 §§ 13-27.[16] However, the county clerk has only limited authority under the statute. The authorized duties, which are primarily clerical, are as follows:

> - If the sentencing court fails to set an offender's monthly payment amount toward his/her LFO, "the department (hereinafter 'DOC') shall set the amount if [DOC] has active supervision of the offender, otherwise the county clerk shall set the amount." RCW 9.94A.760(1).

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[16] Intent and Purpose statement:

> The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. ... The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections.

Law of 2003 c 379 § 13.

- If the trial court's order(s) do not give notice that payroll deductions may issue in the event of failure to pay, "[DOC] or the county clerk may serve" such a notice. RCW 9.94A.760(3).

- "The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations." RCW 9.94A.760(4).

- "Subsequent to any period of supervision [by DOC] ..., the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances." Under some circumstances, "the clerk may modify the monthly payment amount without the matter being returned to the court." RCW 9.94A.760(7)(b).

- "During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule." RCW 9.94A.760(7)(b).

- "Subsequent to any period of supervision [by DOC], ... the county clerk is authorized to collect unpaid legal financial obligations from the offender." RCW 9.94A.760(8).

- The county clerk shall notify the administrative office of the courts (the entity which mails out monthly billings to offenders) of any mandatory wage assignments, and make weekly offender payment reports. RCW 9.94A.760(9), 11(d).

- The county clerk may access WA State employment security department records to verify employment or income, or when seeking any wage assignment or "performing other duties necessary to the collection of an offender's legal financial obligations." RCW 9.94A.760(13).

Thus, these statutes give the clerks the authority to conduct a "review" and verify employment or income for the sole purpose of modifying the monthly payment schedule, and to issue payroll deductions in the event of failure to pay - but nothing else.

A superior court clerk is not authorized to negotiate a stipulated order, to advise a defendant of his constitutional rights or to apply discretion and judgment to implement the auto-jail report date.

The 2003 amendments to RCW 9.94A.760, set forth above, do not authorize a superior court clerk to participate in and negotiate a stipulated order with an offender regarding an unpaid LFO, including the recommendation of any sanction. Nor do they authorize the clerk to advise an offender of his due process rights to a hearing or appointment of counsel, or to accept a waiver of those rights. Nor do the 2003 amendments empower the clerk to determine in his or her discretion that a defendant must report to jail.

In contrast, former RCW 9.94A.200 (recodified as RCW 9.94A.634 by Laws of 2001, c 10, § 6) was amended in 1995[17] to authorize the Department of Corrections to enter into agreements with non-complying offenders and to impose alternative sanctions. Such agreements must be reported to the sentencing court and prosecutor, and the court may modify the sanctions after a hearing. *See* RCW 9.94A.634(3)(a).[18] While the 2003 amendments to RCW 9.94A.760 included county clerks in the collection process, the Legislature did *not* authorize county clerks to assume the role of DOC in general and specifically did not authorize them to negotiate and enter into agreements with non-complying offenders *or* to recommend sanctions. Id.

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[17] Laws of 1995 c 142 § 1.

[18] RCW 9.94A.634 (3)(a) provides as follows:

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

In the absence of a stipulated agreement between DOC and a non-complying offender, or where the court is not satisfied with the sanctions DOC has imposed under RCW 9.94A.634(3)(a), "the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance." RCW 9.94A.634(3)(b). Since the clerk has no authority to negotiate a stipulated agreement or recommend sanctions, the trial court is required by statute to conduct a show cause hearing.

Herein, the Spokane County clerk has actively participated in and negotiated stipulated orders and has apparently recommended sanctions, without lawful authority. DOC terminated its supervision of Mr. Nason in July 2002. (CP 32) Regarding the 11/7/05 order modifying sentence, the clerk acknowledged that she advised Mr. Nason of his rights to a hearing, and stated that he waived those rights and signed the LFO Agreed Order – In Custody, apparently while in jail. (CP 47, 123)

Regarding the 7/7/06 order modifying sentence, the clerk told the trial court she "went to the jail with Deputy Kyle to see Mr. Nason to ask him why he has not been paying on his LFOs" and that "[The Spokane County Superior Court Clerk's Office] felt that [a sanction of] 60 days, because of this violation, was appropriate because we have gone through

this with him before and ... he failed to report back in, he failed to provide financial information, and we wanted to set up a $25 or more monthly payment with him." (7/7/06 RP 5-6) The clerk also stated she advised Mr. Nason of his rights to a hearing. (CP 52)

There is no violation report in the superior court file regarding the 4/30/07 order modifying sentence from which to glean details of the negotiating of the order. However, the clerk again stated that she advised Mr. Nason of his rights to a hearing. (CP 109) The report that triggered his arrest in connection with this order demonstrates unauthorized discretion and exercise of judgment by the clerk: "As indicated by the accounting above, [Mr. Nason] has made none of the payments ordered by Judge Moreno's 7/7/06 order and a review of the court file on this date reveals no motion to stay the order. Therefore, [Mr. Nason] is required to report to jail on 1/24/07 by 4 p.m. to serve the 60 days specified in the attached Order Enforcing Sentence. The defendant is in further violation for not turning himself into the jail on 1/24/07." (CP 53)

In summation, the county clerks are mimicking, without any statutory authority, the procedures followed by DOC officers when a defendant fails to comply with sentencing conditions, and the superior court is illegally allowing them to do so. Mr. Nason's due process rights

and those of other offenders in similar situations have been violated by this unauthorized conduct. The trial court should be directed to limit the superior court clerk's participation in the collection of LFOs to those duties authorized by the Legislature.

4. The trial court erred in denying Mr. Nason credit toward his legal financial obligation for the time served in jail that was attributable to his failure to pay.

Questions of statutory construction are reviewed *de novo*. State v. Malone, 138 Wn. App. 587, 594, 157 P.3d 909 (2007), citing State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Statutes relating to the same subject matter must be read as a unified whole to the end that a harmonious statutory scheme evolves which maintains the integrity of the respective statutes. Anderson v. State, Dept. of Corrections, 159 Wn.2d 849, 861, 154 P.3d 220 (2007), citing Hallauer v. Spectrum Props., Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001); *see also* In re Pers. Restraint of Martin, 129 Wn. App. 135, 141-42, 118 P.3d 387 (2005). A specific statute controls over a general statute on the same topic. Staats v. Brown, 139 Wn.2d 757, 789, 991 P.2d 615 (2000), citing Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994).

RCW 9.94A.760 authorizes the imposition of an LFO[19] and generally establishes procedures for enforcement and collection of the obligations. The failure to pay towards those obligations is subject to the general penalties for noncompliance with any condition or requirement of a sentence (RCW 9.94A.760(10)), including a sanction of up to 60 days confinement per violation. RCW 9.94A.634.

RCW 10.01.180, found in Chapter 10.01, General Provisions, of RCW Title 10, Criminal Procedure, specifically *limits the penalty* that may be imposed due to a failure to pay assessed fines and costs and *mandates that monetary credit be given* for confinement attributable to the failure to pay.

"A defendant [who is] sentenced to pay a fine or costs who defaults in the payment thereof or of any installment **is in** contempt of court as

[19] "Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence." RCW 9.94A.760(1).

"Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430. RCW 9.94A.030(28).

provided in chapter 7.21 RCW."[20] RCW 10.01.180(1) (bolding added).[21] The term of imprisonment imposed upon an offender for willful failure to pay an LFO must be set forth in the commitment order, and:

> *shall not exceed* one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. ... A person committed for nonpayment of a fine or costs *shall be given credit* toward payment for each day of imprisonment at the rate specified in the commitment order.

RCW 10.01.180(3) (emphasis added).

In addition to limiting the amount of confinement and requiring credit, the statute requires that an offender be given the opportunity to perform labor while confined in order to reduce the amount owing on the legal financial obligation:

> When a defendant is committed to jail, on failure to pay any fines and costs, *he shall*, under the supervision of the county sheriff and subject to the terms of any ordinances adopted by the county commissioners, *be permitted to perform labor to reduce the amount* owing of the fine and costs.

RCW 10.82.040 (emphasis added).

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[20] (1) "Contempt of court" means intentional ... [d]isobedience of any lawful judgment, decree, order, or process of the court. RCW 7.21.010(1)(b).

[21] Prior to its amendment in 1989, RCW 10.01.180(1) provided as follows:

(1) When a defendant sentenced to pay a fine or costs defaults in the payment thereof or of any installment, the court on motion of the prosecuting attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance. Laws of 1989 c 373 § 13.

The county legislative authority is required to set the daily value of an offender's confinement or performance of labor during confinement:

> The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned.

RCW 10.82.030.

Herein, the above-discussed provisions of Title 10 RCW, Criminal Procedure, specifically address the legislative constraints imposed on incarceration for a failure to pay an LFO – unlike the more general authority referred to in RCW 9.94A.760(10) and RCW 9.94A.634(3)(c) and (d). The specific provisions requiring limited incarceration and monetary credit do not conflict with the general statutory provisions, and should be construed to apply to Mr. Nason and every other offender who has failed to make scheduled payments.

Furthermore, the Legislature recognizes that an opportunity for repayment must precede incarceration for failure to pay:

> Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit

> reporting. *Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment.*

RCW 9.94A.772 (Laws of 2003 c 379 § 22, eff. July 1, 2003) (emphasis added). Construction of the provisions of Title 10 RCW to require the crediting of an offender's period of incarceration and labor as repayment on the LFO is consistent with the Legislature's recognition.

Moreover, incarcerating individuals without allowing them to pay down their LFOs while incarcerated undermines the purpose of the legislative scheme, which is to improve the likelihood that "the affected agencies will increase the collections which will provide additional benefits to all parties ... ." Laws of 2003 c 379 § 13.

Here, the trial court erred in denying Mr. Nason credit against his LFO for the time served in jail that was attributable to his failure to pay. The matter should be remanded to the superior court for calculation and application of all credit owed.[22] In the event that the county legislative authority, i.e., the Spokane County Commissioners, has failed to establish

[22] Including the penalty in the 4/30/07 order modifying sentence, Mr. Nason has been sanctioned to a total of 300 days of confinement for violations including his failure to pay toward his LFO.

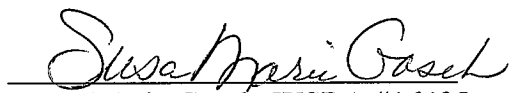
the daily amount,[23] it appears Mr. Nason must be credited a *minimum* of $25 per day for each day served. RCW 10.01.180(3) ("[T]he term of imprisonment ... shall not exceed one day for each twenty-five dollars of the fine or costs ... .").

However, due to the abuse of Mr. Nason's due process rights by the trial court's auto-jail scheme, and considering the amount of jail he has already served, in the interest of justice this Court should order that his LFO has been satisfied in full.

E. CONCLUSION

For the reasons stated, this Court should remand the matter for resentencing. The auto-jail provision should be stricken, and the trial court should be directed to deem the LFO satisfied in full or, in the alternative, to calculate and apply all credit owed toward Mr. Nason's LFO.

Respectfully submitted December 10, 2007.



Susan Marie Gasch, WSBA #16485
Attorney for Appellant

[23] Counsel on appeal could not find any provision for a daily credit amount or jail labor rate in the Spokane County Code or in a county ordinance.

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JSM007 DISPLAY DOCKET SPOKANE SUPERIOR 11-19-07 17:52 7 OF 11
CASE#: 99-1-00353-6 JUDGMENT# 999040317 JUDGE ID:
TITLE: STATE OF WASHINGTON VS NASON, JAMES ROBERT
NOTE1:
NOTE2: ACTIVE

STATUS: APP DATE: 05/24/2007

SUB#	DATE	CODE	DESCRIPTION/NAME	SECONDARY
44	06 30 2006	SHRTBW	SHERIFF'S RETURN ON A BENCH WARRANT 06-21-06	
-	07 07 2006	FNRHRG	FINANCIAL REVIEW HEARING	
		JDG11	JUDGE MARYANN C. MORENO	
45	07 10 2006	ORMS	ORDER MODIFYING SENTENCE 99904031-7	
		JDG11	JUDGE MARYANN C. MORENO	
46	01 26 2007	NT	NOTICE - LFO AUTO JAIL	
47	02 09 2007	MTFBW	MOTION & AFFIDAVIT BENCH WARRANT	
48	02 09 2007	ORW	ORDER FOR WARRANT NO BAIL	
		JDG15	JUDGE MICHAEL P. PRICE	
49	03 28 2007	SHRTBW	SHERIFF'S RETURN ON A BENCH WARRANT 2-9-07	
50	04 04 2007	NT	NOTICE OF ADDRESS CHANGE	
-	04 06 2007	HCNTDA	HEARING CONTINUED:DEF/RESP REQUEST	
		JDG35	JUDGE ELLEN KALAMA CLARK ID#70	

? F1=Help Enter=Process F7=Bwd F8=Fwd PA1=Cancel

APPENDIX "A"